IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 31.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.321 of 2000

R.Muthusamy .. Appellant(Complainant)

vs.

1.J.Mani
2.Ravichandran
3.K.Kumaravelu .. Respondents (Accused)

Prayer: This appeal has been preferred against the Judgment in C.C.No.7/1999, dated 30.11.1999, on the file of the Court of Judicial Magistrate, Kotagiri.

For Appellant : Mr.P.M.Duraisamy

For Respondents : Mr.T.S.Srinivasan for R1 & R3
Mr.Ganesan Rajan for R2

JUDGMENT

Heard the learned counsel appearing for the appellant as well as the learned counsel for the respondents. This appeals has been preferred against the judgment in C.C.No.7/1999 on the file of the Court of Judicial Magistrate, Kotagiri. The complainant in C.C.No.7/1999 is the appelalnt herein.

2. The learned counsel for the appellant would contend that he has preferred a private complaint against the accused for the offence under Section 279, 377, 338 and 211 of IPC. The private complaint was taken on file by the learned Judicial Magistrate and since the appellant/complainant could not be present on the date of hearing viz.30.11.1999, the complaint was dismissed under Section 256 of Cr.P.C.

3. The learned counsel for the appellant would contend that on 19.8.1999 the complainant was present in the Court and the accused were also present and for furnishing copies under Section 207 of Cr.P.C the case was adjourned to 24.9.1999 and that on 24.9.1999 also he was present. But on 28.10.1999 while he was standing out side the Court the case was called and adjourned to 16.11.1999 for furnishing copies to the accused. The complainant would say in the grounds of

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appeal that the hearing date was mistakenly noted by the appellant as 26.11.1999 instead of 16.11.1999 that is why he could not be present for the hearing on 16.11.1999 and that no notice was served on him for the hearing on 30.11.1999. The learned Judicial Magistrate has examined the process server of the Court as C.W.1 and dismissed the complaint.

4. A perusal of the deposition of the Court witness Surveswaran (Office Assistant) will go to show that the complainant was called in the open Court thrice. But there was no evidence on record to the effect that inspite of notice served for the hearing on 30.11.1999, the complainant failed to appear before the Court. Further it is pertinent to note in this case that a case has been registered by the police in Cr.No.384/1998 on the basis of the complaint preferred by A1-Mani, who is the driver of the Corporation Bus bearing Registration No.TCB 1537. Under such circumstances, this Court is of the view that an opportunity must be given to the appellant to prosecute his case against the accused. Further the complainant has also produced wound certificate to show that he had sustained multiple fractures. Point is answered accordingly.

5. In the result, the appeal is allowed and the judgment in C.C.No.7/1999 on the file of the Court of Judicial Magistrate, Kotagiri, is hereby set aside. Both the complainant and the accused shall appear before the Trial Court on 19.2.2007. On appearance of the parties, the learned Judicial Magistrate is directed to dispose of the case within two months thereafter, after following the formalities as per the provisions contemplated under law.

ssv

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To,

1. The Judicial Magistrate, Kotagiri.

2. - do - thro' The Chief Judicial magistrate, Coimbatore.

ONE CC TO MR.P.M. DURAISWAMY, ADAVOCATE SR NO 5634
ONE CC TO MR.GANESH RAJAN, ADVOCATE SR 5538

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JRG(CO)
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